

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

**ORIGINAL
FILE
RECEIVED**

APR 23 1992

Federal Communications Commission
Office of the Secretary

In the matter of:)
)
Amendment of Parts 2, 22 and 25)
of the Commission's Rules (CELSAT))
)
For an Allocation of Frequencies and)
Other Rules for a New Nationwide)
Hybrid Space/Ground Cellular Network)
for Personal/Mobile Communications)
Services)

RM-7927
PP-28

REPLY OF McCaw CELLULAR COMMUNICATIONS INC.

Pursuant to Section 1.405 of the Rules, 47 C.F.R. § 1.405 (1991), McCaw Cellular Communications, Inc. (McCaw) hereby replies to comments in the above-captioned proceeding. As discussed below, McCaw requests that the petition of CELSAT, and its associated pioneer's preference request, be dismissed without prejudice.

I. BACKGROUND

McCaw is one of the largest cellular service providers in the United States. In addition to numerous cellular radio licenses, McCaw holds hundreds of common carrier microwave licenses whose transmissions are used to communicate between cell sites and to interconnect the cellular switch with its cells. Over 400 of those paths operate in spectrum near 2.1 GHz.

No. of Copies rec'd 0+5
List A B C D E

On February 7, 1992, CELSAT, Inc. requested the Commission to initiate a rulemaking to allocate spectrum for personal mobile services via both satellite and terrestrial transmitters, a concept it calls HPCN or hybrid personal communications networks.¹ CELSAT sought between 32 and 37 MHz of paired spectrum at 1.61 GHz (uplink) and 2.48 GHz (downlink) or at 2.11 GHz (downlink) and 2.41 GHz (uplink). CELSAT apparently seeks to become the exclusive licensee in these frequencies.² By public notice, the FCC requested comment on CELSAT's request.³

II. ARGUMENT

The comments in the opening round of this proceeding demonstrate that CELSAT is ineligible for spectrum at 1.61/2.48 GHz because it has failed to meet the clear and lawful cut-off notice that required all applicants for this spectrum to file by June 3, 1991.⁴ Beyond this, however, CELSAT's request for spectrum at 2.11/2.41 GHz should be dismissed for two additional reasons.

First, CELSAT proposes to use spectrum that is not and likely will never be allotted for use by satellites. Although the recent World Administrative Radio

¹ CELSAT Petition for Rulemaking, RM-7927 (filed Feb. 7, 1992). Three days later, CELSAT filed a request for a pioneer's preference covering the same proposal.

² To date, CELSAT has not filed an application seeking use of the frequencies its petition for rulemaking discusses.

³ Public Notice 22154 (Mar. 9, 1992).

⁴ Public Notice, 6 F.C.C. Rcd 2083 (1991). See Comments of TRW, Loral/Qualcomm, Motorola Satellite Corp., American Mobile Satellite Corp. (all filed Apr. 8, 1992); Comments of Constellation (filed Apr. 9, 1992).

Conference (WARC-92) amended the international table to specify additional mobile satellite service allocations in frequencies in the neighborhood of those proposed by CELSAT,⁵ no additional satellite spectrum was allocated in most of the bands requested by CELSAT.⁶ Simply put, therefore, the bands requested by CELSAT are not available for the use it proposes.⁷

Second, most of the band in which CELSAT seeks a satellite downlink allocation is currently under consideration in the agency's Emerging Technologies notice of proposed rulemaking.⁸ As the NPRM stated, the Commission currently is reviewing "a number of requests for new services and technologies."⁹ These new services include voice and data PCS, and various mobile satellite services. It appears likely that the numerous demands for spectrum will vastly exceed the spectrum available,¹⁰ even if sharing between existing and prospective uses turns out to be practical.

⁵ Final Acts of the 1992 WARC, Corrigendum, at 18-20.

⁶ The 9 MHz requested by CELSAT that was addressed at the WARC (2120-2129 MHz) was allocated for satellite services only in Region 2 and only on a secondary basis.

⁷ Given its failure to specify the appropriate frequencies, it is not surprising that CELSAT's proposal would utilize only one half of paired common carrier microwave frequencies at 2110-2130/2160-2170 MHz. CELSAT does not explain what would become of the other portion of the paired spectrum were the FCC to adopt its plan.

⁸ Use of New Telecommunications Technologies, 7 F.C.C. Rcd 1542 (1992).

⁹ 7 F.C.C. Rcd at 1542.

¹⁰ Id. at 1543.

Moreover, before assigning new uses to particular portions of the spectrum, the FCC will be required to address the concerns of existing users of frequencies between 1850-2200 MHz. As one of the major users of the common carrier microwave frequencies at 2110-2130 and 2160-2180 MHz, McCaw is naturally concerned that adequate measures are taken to avoid disruption to existing services. This issue, as well, is being addressed in the Emerging Technologies NPRM.¹¹

As a result, CELSAT's proposal should be considered -- if at all -- in the context of the on-going Emerging Technologies proceeding.¹² Only there can the FCC examine the various spectrum alternatives collectively, weigh their benefits and risks, and reach a unified decision on the most appropriate allocations for valuable spectrum.¹³ No public interest would be served by the piecemeal consideration of a single spectrum proposal outside the framework best suited for reasoned and comprehensive decisionmaking.

III. CONCLUSION

CELSAT seeks vast amounts of L- and S-band spectrum for a geostationary mobile satellite system. Unfortunately, CELSAT not only selected the wrong

¹¹ Id. at 1544-46.

¹² In many respects, CELSAT's proposal is entirely duplicative of the geostationary and non-geostationary mobile satellite proposals already before the Commission. The Commission could determine that no public interest purpose would be served by further consideration of additional, redundant proposals, especially with respect to CELSAT's associated request for a pioneer's preference.

¹³ Alternatively, CELSAT could choose to await the FCC proceeding that will implement the results of WARC-92.

frequencies for this approach -- spectrum already "cut-off" and spectrum not proposed to be allocated for space services -- but it bypassed an ongoing FCC proceeding that is considering the various requests for spectrum in this region. For these reasons, the CELSAT petition for rulemaking and request for pioneer's preference should be dismissed. If CELSAT chooses to unveil its plan in the context of Docket 92-9, the FCC can consider the merits of that system in the broader context of carefully planned spectrum allocations for the next century.

Respectfully submitted,

**McCAW CELLULAR
COMMUNICATIONS, INC.**

by: R. Michael Senkowski

R. Michael Senkowski

Carl R. Frank

of

WILEY, REIN & FIELDING

1776 K Street, NW

Washington, D.C. 20006

(202) 429-7000

Scott K. Morris
McCaw Cellular Communications,
Inc.
5400 Carillon Point
Kirkland, WA 98033

Its Attorneys

April 23, 1992

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 1992, I caused copies of the foregoing "Reply of McCaw Cellular Communications, Inc." to be mailed via first-class postage prepaid mail to the following:

Mr. Victor J. Toth
THE LAW OFFICE OF VICTOR J. TOTH
2719 Soapstone Drive
Reston, Virginia 22091

Elizabeth A. Nicholson
Elizabeth A. Nicholson